

No. 22-16742

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In the  
**United States Court of Appeals**  
for the Ninth Circuit

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VICENTE TOPASNA BORJA, ET AL.,

*Plaintiffs-Appellants,*

v.

SCOTT NAGO, ET AL.,

*Defendants-Appellees.*

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On Appeal from the United States District Court for the  
District of Hawaii, No. 1:20-cv-00433-JAO-RT  
Hon. Jill Otake, *United States District Judge*

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**PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION  
FOR AN EXTENSION OF TIME TO FILE  
OPENING BRIEF AND EXCERPTS OF RECORD**

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## **DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1(a), Plaintiff-Appellant Equally American aka Equally American Legal Defense and Education Fund states that it is a 26 U.S.C. § 501(c)(3) nonprofit corporation with no parent corporation, and that there is no publicly held corporation that holds 10% or more of its stock.

**PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION  
FOR AN EXTENSION OF TIME TO FILE  
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Plaintiffs-Appellants Vicente Topasna Borja, Edmund Frederick Schroeder, Jr., Ravinder Singh Nagi, Patricia Arroyo Rodriguez, Laura Castillo Nagi, and Equally American (Appellants) respectfully request a 45-day extension of the deadline to file their opening brief and excerpts of record, up to and including Monday, May 1, 2023. *See* Fed. R. App. P. 26(a), (b), 27. Appellants' opening brief and excerpts of record are currently due March 16, 2023. ECF No. 16; Cir. R. 30-1.2(a). This is Appellants' second extension request; the Court previously granted Appellants a 30-day streamlined extension from February 14, 2023, to March 16, 2023. ECF No. 16. Counsel for each of the Defendants-Appellees (Appellees) – Scott T. Nago; the United States, Federal Voting Assistance Program, David Beirne, and Lloyd J. Austin III (the federal defendants); and Glen Takahashi – have received a copy of this motion, and Appellees do not oppose this request.

As set forth in the accompanying declaration, several considerations support granting the requested extension.

*First*, Appellants' counsel have exercised diligence, and the brief will be filed within the time requested. Transcripts of all hearings have been received and filed in the district court, and the court reporter is not in default with respect to any transcripts. *See* D. Ct. ECF Nos. 95, 187, 188, 189.

*Second*, Appellants' counsel have substantial need for additional time. Counsel need to dedicate time to other matters between now and May 1, 2023, the requested deadline:

- March 1, 2023: Reply brief due in *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir.);
- March 8, 2023: Deferred appendix due in *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir.);
- March 15, 2023: Final briefs due in *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir.);
- March 17, 2023: Merits-stage reply brief due in *Polselli, et al. v. Internal Revenue Service*, No. 21-1599 (U.S.);
- March 20, 2023: Oral argument in *Arizona, et al. v. Navajo Nation, et al.*, No. 21-1484 (U.S.), and *Department of Interior, et al. v. Navajo Nation, et al.*, No. 22-51 (U.S.);
- March 22, 2023: Cert-stage reply brief due in *Culley, et al. v. Marshall, et al.*, No. 22-585 (U.S.);
- March 24, 2023: Opening brief and excerpts of record due in *TotalEnergies Renewables USA, LLC, et al. v. Trina Solar (U.S.) Inc., et al.*, No. 22-16763 (9th Cir.);

- March 25, 2023: Petition for a writ of certiorari due in *Verdun, et al. v. City of San Diego, et al.*, No. 22A617 (U.S.);
- March 27, 2023: Supplemental brief due in *The Coca-Cola Co. & Subsidiaries v. Commissioner*, No. 31183-15 (T.C.);
- March 29, 2023: Oral argument in *Polselli, et al. v. Internal Revenue Service*, No. 21-1599 (U.S.);
- April 6, 2023: Intervenor brief due in *American Cruise Lines v. United States, et al.*, No. 22-1029 (2d Cir.);
- April 13, 2023: Merits brief due in *Pulsifer v. United States*, No. 22-340 (U.S.);
- April 18, 2023: Supplemental reply brief due in *The Coca-Cola Co. & Subsidiaries v. Commissioner*, No. 31183-15 (T.C.);
- April 20, 2023: Oral argument in *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir.);
- April 21, 2023: Oral argument in *Airlines for America v. City & County of San Francisco*, No. 22-15677 (9th Cir.); and
- Between April 24 and April 28, 2023: Oral argument in *Saba Capital CEF Opportunities 1, Ltd., et al. v. Nuveen Floating Rate Income Fund, et al.*, No. 22-407 (2d Cir.) (exact date to be announced closer to argument).

*Third*, and relatedly, Appellants' counsel have already obtained extensions, as practicable, in the matters listed above. *Norfolk Southern* is on an expedited schedule; the Supreme Court's schedule sets the timing for the oral arguments in *Navajo Nation* and *Polselli*; and Appellants' counsel have

obtained extensions for the cert petition in *Verdun* and the briefs in *TotalEnergies* and *American Cruise Lines*. Further, counsel have been working diligently in February despite other deadlines, including a Supreme Court merits brief due February 1 in *Navajo Nation*; an opening brief and joint appendix due February 13 in *TBL Licensing LLC f/k/a The Timberland Company, and Subsidiaries (a Consolidated Group) v. O'Donnell*, No. 22-1783 (1st Cir.); and a reply brief due February 23 in *Love v. Vanihel*, No. 21-2406 (7th Cir.).

*Fourth*, this appeal involves important constitutional and remedial questions relating to the denial of voting rights under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 to 20311, and Hawaii's implementation of the Uniform Military and Overseas Voters Act, Hawaii Revised Statutes §§ 15D-1 to -18 and Hawaii Administrative Rules § 3-177-600. Additional time will help ensure that counsel can submit a brief that will most effectively help the Court resolve this appeal.

*Finally*, undersigned counsel has communicated with counsel for Appellees and shared a copy of this motion. Appellees do not oppose the requested extension.

For the foregoing reasons, Appellants respectfully request that the time to file their opening brief and excerpts of record be extended by 45 days,

up to and including May 1, 2023 (pushing from Sunday, April 30, 2023, *see* Fed. R. App. 26(a)(1)(C)).

Dated: February 28, 2023

Respectfully submitted,

/s/ Parker Rider-Longmaid

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*Counsel for Plaintiffs-Appellants Vicente Topasna Borja, et al.*

### CERTIFICATE OF COMPLIANCE

I hereby certify that (1) this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because, as calculated by Microsoft Word, it contains 854 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), and (2) this motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Book Antiqua font.

Dated: February 28, 2023

/s/ Parker Rider-Longmaid  
Parker Rider-Longmaid



**DECLARATION OF PARKER RIDER-LONGMAID  
IN SUPPORT OF PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION  
FOR AN EXTENSION OF TIME TO FILE  
OPENING BRIEF AND EXCERPTS OF RECORD**

I, Parker Rider-Longmaid, hereby declare as follows:

1. I am over twenty-one years of age and am competent to testify to the matters set forth herein.
2. The facts stated herein are within my personal knowledge, discussion with my colleagues, or review of case materials and are true and correct.
3. I am Counsel at the law firm Skadden, Arps, Slate, Meagher & Flom LLP.
4. I represent Plaintiffs-Appellants in this appeal.
5. I have exercised diligence in working with my colleagues to prepare Plaintiffs-Appellants' opening brief and excerpts of record.
6. The court reporter is not in default with respect to any transcript.
7. The opening brief and excerpts of record were initially due February 14, 2023. ECF No. 1. On February 6, 2023, Plaintiffs-Appellants obtained a 30-day streamlined extension. ECF No. 16. The opening brief and excerpts of record are currently due March 16, 2023. *Id.*

8. Plaintiffs-Appellants now request a 45-day extension, up to and including May 1, 2023 (pushed from Sunday, April 30, 2023).

9. Plaintiffs-Appellants' claims present complex constitutional and remedial questions, and, given the press of other work listed in the accompanying motion, counsel will need additional time to prepare and submit a brief that will most effectively help the Court resolve this appeal.

10. The motion's statements about the deadlines in *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir.); *Polselli, et al. v. Internal Revenue Service*, No. 21-1599 (U.S.); *Arizona, et al. v. Navajo Nation, et al.*, No. 21-1484 (U.S.), and *Department of Interior, et al. v. Navajo Nation, et al.*, No. 22-51 (U.S.); *Culley, et al. v. Marshall, et al.*, No. 22-585 (U.S.); *TotalEnergies Renewables USA, LLC, et al. v. Trina Solar (U.S.) Inc., et al.*, No. 22-16763 (9th Cir.); *Verdun, et al. v. City of San Diego, et al.*, No. 22A617 (U.S.); *The Coca-Cola Co. & Subsidiaries v. Commissioner*, No. 31183-15 (T.C.); *American Cruise Lines v. United States, et al.*, No. 22-1029 (2d Cir.); *Pulsifer v. United States*, No. 22-340 (U.S.); *Airlines for America v. City & County of San Francisco*, No. 22-15677 (9th Cir.); *Saba Capital CEF Opportunities 1, Ltd., et al. v. Nuveen Floating Rate Income Fund, et al.*, No. 22-407 (2d Cir.); *TBL Licensing LLC f/k/a The Timberland Company, and Subsidiaries (a Consolidated Group) v.*

*O'Donnell*, No. 22-1783 (1st Cir.); and *Love v. Vanihel*, No. 21-2406 (7th Cir.) are all true and correct.

11. The motion's statements about obtaining extensions, as practicable, in the other matters listed in the motion are true and correct.

12. I have communicated with counsel for Defendants-Appellees Scott T. Nago, the federal defendants (as defined on page 1 of the motion), and Glen Takahashi, and provided each of them with a copy of this motion. Counsel have indicated that no Defendant-Appellee opposes the requested extension.

13. This motion is made more than seven days before the deadline for the opening brief, as required by Cir. R. 31-2.2(b).

14. Should this Court grant this motion, the opening brief and excerpts of record will be filed by a time up to and including May 1, 2023.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 28, 2023

Respectfully submitted,

/s/ Parker Rider-Longmaid

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*Counsel of Record*

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2023, I electronically filed the foregoing motion and declaration with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: February 28, 2023

/s/ Parker Rider-Longmaid  
Parker Rider-Longmaid